

**Child, Inc. and Texas Federation of Teachers. Case
AO-241**

March 24, 1983

ADVISORY OPINION

BY MEMBERS JENKINS, ZIMMERMAN, AND
HUNTER

A petition and supplemental petition, with exhibits, were filed on November 8 and 10, 1982, respectively, by Child, Inc., herein called the Employer, for an advisory opinion, in conformity with Sections 102.98 and 102.99 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, seeking to determine whether the Board would assert jurisdiction over the Employer and, further, praying that the Board decline to assert jurisdiction. On November 23, 1982, Texas Federation of Teachers, herein called the Union, filed a response to the supplemental petition, with exhibits, and on December 6, 1982, filed a position brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In pertinent part, the petitions, the response and brief, and the exhibits allege as follows:

1. There is presently pending before the District Court of Travis County, Texas, a lawsuit styled *Child, Inc. v. Texas Federation of Teachers*, No. 339,944 in the 147th District Court, in which Child, Inc., has prayed for relief that the Union and its affiliated organizations be precluded and temporarily enjoined from representing any employees of the Employer until and unless the American Federation of Teachers changes its public position so that it encourages nonstate-certified teachers to teach in publicly funded day care and child development programs.

2. The Employer is a nonprofit Texas corporation which provides community-based day care and early childhood development, and is a designated agency for delivering Head Start and Title XX services. Each service is funded by the United States Government.

3. Exhibits supplied by the Employer reflect that the Employer had gross revenues for the most recent fiscal year that exceeded \$8 million, and that it purchased approximately \$55,000 worth of supplies and/or equipment from companies which purchased approximately \$13,000 worth of those supplies and/or equipment from outside the State of Texas. Exhibits supplied by the Union reflect that the Employer was awarded by the United States Department of Health and Human Services for its Head Start program a total of \$1,778,031 during

the 1982-83 budget period, and that the Employer received \$770,232.17 from the Texas Department of Human Resources for the period of November 1981 through October 1982.

4. The Union essentially admits the above commerce data.

5. There is no representation or unfair labor practice proceeding involving the same labor disputes pending before this Board.

6. As noted above, the Union has filed a response to the supplemental petition, and has filed a position brief.

On the basis of the above, the Board is of the opinion that:

1. The Employer is a nonprofit Texas corporation which provides Head Start child development services and Title XX services. Each service is funded by the United States Government.

2. The Board's advisory opinion proceedings "are designed primarily to determine questions of jurisdiction by the application of the Board's discretionary standards to the 'commerce' operations of an employer."¹ As the Employer received revenues exceeding \$8 million, and has received in excess of \$1 million from Federal funds the transfer of which across state lines constitutes commerce more than sufficient to establish legal jurisdiction,² it is clear that the Employer is engaged in commerce within the meaning of the Act and meets the Board's discretionary jurisdictional standards.³

The Employer, citing *Pennsylvania Labor Relations Board (Urban League of Pittsburgh (Pittsburgh Community Day Care))*, 209 NLRB 152 (1974), contends that, in order to effectuate Federal policy as to Head Start and Title XX, the Board has previously declined to assert its jurisdiction over organizations deemed to be "adjuncts" to the public school system. More recently, however, in *National Transportation Service, Inc.*, 240 NLRB 565 (1979), the Board indicated that, when ascertaining whether jurisdiction should be asserted over an employer which appears to maintain close ties to an exempt governmental entity, the Board shall no longer decline jurisdiction solely because of the relationship between the "purpose" of the exempt entity and the nature of the services provided to it by such an employer. Rather, the Board decided henceforth to resolve such jurisdictional questions by first determining whether the subject employer

¹ *Upper Lakes Shipping, Ltd.*, 138 NLRB 221 (1962). The Employer's allegation that the Union has a "fatal conflict of interest" in representing the Employer's employees is an issue which does not fall within the intent of the Board's advisory opinion rules; nor is it, contrary to the Employer's suggestion, grounds upon which the Board would decline to assert jurisdiction over the Employer.

² *Mon Valley United Health Services, Inc.*, 227 NLRB 728 (1977).

³ *Ibid.*

itself meets the definition of "employer" in Section 2(2) of the Act and, if it does, then determining whether that employer has sufficient control over the employment conditions of its employees to enable it to bargain with a labor organization which represents them.⁴ The Employer's submission, setting forth the relationship between the Employer and its exempt governmental grantors, raises

⁴ See *D. T. Watson Home for Crippled Children*, 242 NLRB 1368, 1370 (1979), purporting to abandon the "adjunct to the public school system" standard.

Member Hunter does not take a position with respect to the "adjunct to the public school system" standard; nor does he reach this issue in his dismissal of the petition for advisory opinion. He further notes that he has rejected the approach taken by a majority of the Board in *National Transportation Service, Inc.* In this connection, see Member Hunter's dissenting opinion in *Wordsworth Academy*, 262 NLRB 438 (1982).

the issue whether the Employer shares the exemption of its governmental grantors and thereby precludes the assertion of jurisdiction over the Employer. This issue does not fall within the intentment of the Board's advisory opinion rules.⁵ Accordingly, although we are able to advise the parties that the Employer falls within the Board's dollar standards for the assertion of jurisdiction, we are unable to resolve the ultimate jurisdictional issue presented. We shall, therefore, dismiss the petition for advisory opinion.

Accordingly, it is hereby ordered that, for the reasons set forth above, the petition for an advisory opinion be dismissed.

⁵ See *Massachusetts Labor Relations Commission (Baystate Bus Corporation)*, 236 NLRB 1357 (1978), and cases cited in fn. 4.